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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/529,430

11/02/2005

Magnus Ohman

P05,0115

6646

26574

7590

10/06/2008

SCHIFF HARDIN, LLP  
PATENT DEPARTMENT  
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EXAMINER

PATTON, AMANDA K

ART UNIT

PAPER NUMBER

3762

MAIL DATE

DELIVERY MODE

10/06/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/529,430	<b>Applicant(s)</b> OHMAN ET AL.	
	<b>Examiner</b> Amanda Patton	<b>Art Unit</b> 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 27 August 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 14-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's amendment dated August 27, 2007 is acknowledged. Currently claims 14-29 are pending in this application.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14, 15, 18–20 and 25–29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilli, (USPN 4,869,252) in view of Levine (USPN 6,430,441).

Regarding **claims 14, 15 and 18–20**, Gilli discloses a pacing pulse generator (e.g., FIG. 2, element 36), a high energy pulse generator (e.g., FIG. 1, element 17), sensing circuitry (e.g., FIG. 2, element 37), and a control unit (e.g., FIG. 1 element 16), a first mode, a second mode and automatically switching (e.g., FIGS. 4–7 and their corresponding descriptions in columns 5–8, e.g., for FIG. 5 see description in column 7, lines 22–63) but does not disclose a first mode that includes an autocapture mode. Levine discloses that it was well known in the art to normally operate a pacing pulse generator in an autocapture mode (e.g. Abstract). It would have been obvious to one having ordinary skill in the art to replace the first mode of Gilli with an autocapture mode, since such modes are well known in the art for providing the system with the

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ability to only apply pacing when necessary at the lowest stimulation level possible for providing the predictable results of reducing battery depletion.

Examiner wishes to note that the addition of the phrase “and, in said second mode, said control unit operating said pacing pulse generator with predetermined settings for said pacing pulses” to the independent claim does not preclude the second mode to operate in an autocapture mode, as the “predetermined setting” could include operation in an autocapture mode. If Applicant wishes to claim more specific requirements for the second mode of operation, such limitations should be inserted in the claims as supported by the specification.

Regarding **claims 25–29**, Gilli discloses an amplitude (claim 25) (e.g., column 2, lines 39–42); deliver pacing pulses to a ventricle and atrium of a heart (claims 26–29) (e.g., column 8, lines 49–50; column 1, lines 40–42).

Claims 16, 17, 21–24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilli and Levine in view of Grevis et al. (USPN 4,895,151).

Regarding **claims 16, 17, 21, 23 and 24**, Gilli and Levine discloses the essential features of the claimed invention as described above except for time intervals in a range: between one minute and fifteen minutes (claims 16 and 23), between five minutes and ten minutes (claims 17 and 24), between five minutes and fifteen minutes (claim 21). However, Grevis disclose time intervals in a range: between one minute and fifteen minutes, between five minutes and ten minutes, between five minutes and fifteen minutes (e.g., FIG. 4; ABSTRACT lines 6–9; column 6, lines 6–11) to ensure that therapy is delivered at the optimum time and duration that is comfortable and safe for a patient. Therefore, it would have been obvious to one of ordinary

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skill in the art at the time the invention was made to have modified the invention of Gilli and Levine to include time intervals in a range: between one minute and fifteen minutes, between five minutes and ten minutes, between five minutes and fifteen minutes, as taught by Grevis to ensure safe and effective administration of therapy to a patient.

Regarding **claim 22**, Gilli, Levine, and Grevis disclose the essential features of the claimed invention as described above except for approximately ten minutes. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include approximately ten minutes, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). (See MPEP 2144.05). Additionally, it is well known in the art to use approximately ten minutes so that application of therapy is in accordance with the hemodynamic condition of a patient to ensure reliable therapy delivery for optimum results and patient safety.

### ***Response to Arguments***

Applicant's arguments with respect to claims 14-29 have been considered but are moot in view of the new ground(s) of rejection. Examiner again wishes to note that the claims as presently filed do not exclude the second mode from operating in an autocapture mode, as the "predetermined setting" could include operation in an autocapture mode. If Applicant wishes to claim more specific requirements for the second mode of operation, such limitations should be inserted in the claims as supported by the specification.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda Patton whose telephone number is (571) 270-1912. The examiner can normally be reached on Monday - Friday, 8:30am - 5:00pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/AKP/  
Examiner, Art Unit 3762

/George R Evanisko/  
Primary Examiner, Art Unit 3762